AN

ADDRESS

DELIVERED IN THE OLD SOUTH MEETING-HOUSE IN BOSTON

NOVEMBER 27, 1895

BEFORE THE

SOCIETY OF COLONIAL WARS

IN THE

COMMONWEALTH OF MASSACHUSETTS

IN COMMEMORATION OF

THE SIX HUNDREDTH ANNIVERSARY

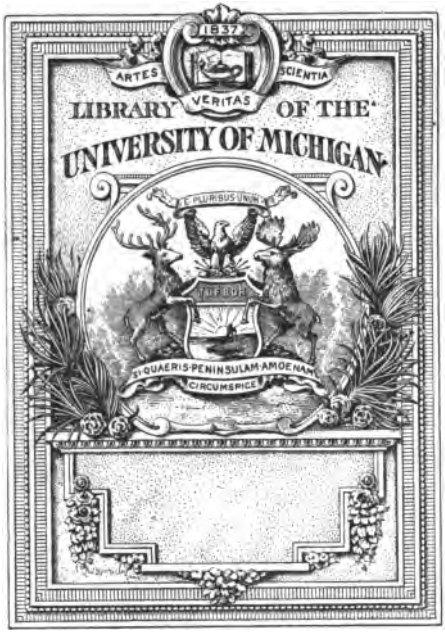
OF THE

FIRST SUMMONING OF CITIZENS AND BURGESSES TO THE PARLIAMENT OF ENGLAND

WHEREIN THE HISTORY OF THE HOUSE OF COMMONS IS SKETCHED AND A COMPARISON MADE OF THE DEVELOPMENT OF THE LEGISLATURES OF GREAT BRITAIN AND OF THE COMMONWEALTH OF MASSACHUSETTS

BY

ABNER CHENEY GOODELL, JUNIOR



To Mr. Henry Williams,

From the Publishers, by direction and with the compliments of the Author.

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ADDRESS.

MR. GOVERNOR AND MEMBERS OF THE SOCIETY, LADIES AND GENTLEMEN: I have not felt at liberty, even under the stress of exacting and unremitting public duties, to decline the honor of your invitation to discourse, on this occasion and within these hallowed walls, upon the great theme which you have proposed. I am the less reluctant to gratify you because the subject — never to my knowledge heretofore publicly discussed in New England — is one upon which my special studies for many years, if they do not qualify me to speak with authority, justify me in holding opinions which, though in some respects they may differ from the general sentiment, may, I trust, enable you to correct some erroneous views, assist in your efforts to penetrate obscurities which shroud the history of Saxo-Norman legislation, and present in a new light data serviceable for accurately comparing the excellencies and defects of the English and American legislative systems.

The lineal relation borne by our Anglo-American legislatures to the English Parliament, or, as it now exists, the Parliament of the United Kingdom of Great Britain and Ireland, renders the study of its organization and development not only deeply interesting to us Americans, but profitable in proportion to the degree of thoroughness with which the study is pursued. The field, however, is so vast, and the details so intricate, that in order to restrict a discussion of any special topic embraced in it to the limits prescribed by a regard for your patience, it will be necessary to omit so much that is instructive or entertaining that the attempt to draw the line of exclusion is embarrassing. For this reason, also, I must forbear to cite authorities in support of views expressed upon disputable points, and of conclusions deduced in comparing with corresponding features in our own legislative system such salient and important particulars from the English prototype as I shall select for that purpose.

It may seem not quite in accordance with what is expected of me on this occasion to question the assumption that the present year is a centennial multiple of the date of the event we would commemorate; yet I confidently ask your favorable consideration of some preliminary critical observations tending to refute the generally received opinion that the essential features of the British Parliament of to-day date from the year 1295. There are two principal particulars in which it seems to me the selection of this year as an epoch is a mistake; and these are: first, the formality of the proceedings of six centuries ago which are supposed to sustain the assumption, and second, the dissimilarity of the recognized constitutional functions and the actual political status of the Parliament of our day and of that of King Edward.

To lay the foundation for a clear expression of what I have in mind, I think I cannot do better than to quote a recent writer on the history of England, who, it is generally acknowledged, has combined with vivid and fascinating description great impartiality and thoroughness of research and a grasp extraordinarily comprehensive. I quote from the "Short History of the English People," by the lamented Dr. John Richard Green, the author's encomium of Simon de Montfort, Earl of Leicester, to whom he ascribes the merit of having caused to be issued the first writs for summoning a House of Commons in the sense in which that phrase is now understood. It is true that Earl Simon's Parliament antedates the Parliament of Edward by some thirty years; but, as I shall attempt to show, many of the reasons for excluding this Parliament or convention from the line of deliberative bodies worthy of the name of "Parliament," according to the modern interpretation of that word, apply with equal force to the Parliament of Edward.

Dr. Green says, —

> It was the genius of Earl Simon which first broke through the older constitutional tradition and dared to summon two burgesses from each town to the Parliament of 1265. Time had, indeed, to pass before the large and statesmanlike conception of the great patriot could meet with full acceptance. Through the earlier part of Edward's reign we find a few instances of the presence of representatives from the

towns, but their scanty numbers and the irregularity of their attendance show that they were summoned rather to afford financial information to the Great Council than as representatives in it of an estate of the realm. But every year pleaded stronger and stronger for the earl's conception, and in the Parliament of 1295 that of 1265 found itself at last reproduced.

The admission of the burgesses and knights of the shire to the assembly of 1295 completed the fabric of our representative constitution. The Great Council of the Barons had become the Parliament of the realm, a parliament in which every order of the State found itself represented, and took part in the grant of supplies, the work of legislation, and the control of government. But . . . in all essential points the character of Parliament has remained the same from that time to this.

Even allowing full weight to the author's subsequent qualification of this statement, no comment is necessary to impress you with the absoluteness of his belief in the exalted character and patriotic services of the brother-in-law of the ruling monarch, the third Henry. But let us be so inquisitive as to go behind the historian to his authorities, to learn how far he is justified in declaring that "in all essential points the character of Parliament has remained the same from that time to this." Let us first compare the requisite qualifications of representatives and of their constituents at the beginning and end of the six centuries intervening between the reigns of Henry III. and Victoria. We will begin with a search for the writs that were issued for summoning the Parliament of 1265; and we shall not proceed far in this search before fully satisfying ourselves that no writs to summon citizens and burgesses to that assembly were issued, but that simply "the citizens of York and Lincoln and other burghs of England were written unto to send two citizens and two burgesses according to the form of the writ directed to the Bishop of Durham," the tenor of which is exactly preserved to this day.

The writ shows that this Parliament was composed of the prelates and great men of the kingdom; that is, the bishops, abbots, and priors, and such of the noblemen as were of Montfort's party, together with two knights from each shire — all duly summoned by precepts in the king's name — and two citizens and two burgesses from the respective cities and boroughs of the realm. The returns of the writs, however, do

not show whether the sheriffs or the electors of the counties were directed to choose, or actually chose, the knights; and although the particulars are too long to be here detailed, except as they may be referred to in passing, it has been demonstrated, I think beyond a doubt, that the citizens and burgesses invited to send representatives to that convention or Parliament were exclusively the king's military tenants *in capite*, or, in other words, his inferior barons, together, perhaps, with a few who held lands in *frank ferme*, — the "free and common socage" of a later period, by which tenure the territory of Massachusetts was held under her charters. Though not a military tenure, this was an honorable one, ranking with, or embracing, the tenure of *petit sergeantry*. The citizens and burgesses — inferior officers in the Norman army, or their representatives — being in the enjoyment of franchises granted by the crown, were, like the holders of frank tenements, fiefs of the king, and members of the French or Norman party, as the word "frank" implies. This word, which is sometimes by the old writers plainly written "French," as you, Mr. Chairman, undoubtedly have observed in your recondite studies of the Anglo-Norman Pleas, loses its original signification in its modern Saxon translation, "free," in which form it is misleading alike to the lawyer and the historian by association with our modern ideas of freedom or personal liberty.

No one not of this favored aristocracy of barons or "free socmen" was eligible to the king's councils, nor could he exercise the elective franchise. Hence, since that earliest House of Commons was in no sense popular either in its membership or as respects the qualifications of the electors, there is no such resemblance between it and its present namesake as to warrant us in connecting them in the same series as essentially identical in constitution and function.

At the risk of seeming to clash with the opinion expressed by our learned Chairman in his introductory address, I am compelled to say, furthermore, with regard to Dr. Green's eulogium of Simon de Montfort, that it seems to me that neither the earl's character, his motives, nor his achievements entitle him to the great honor which the historian would confer upon him. A

brave but ambitious and unscrupulous French adventurer, the immediate inheritor of a name execrable for its association with repeated atrocious massacres of tens of thousands of the inoffensive Albigenses, he came to England — where he was allied to the royal family as well as to some of the highest of the nobility — evidently for no other purpose than to gratify his lust for honors and dominion. He insinuated himself into the good graces of Henry, but betrayed and then clandestinely married the king's sister, the duchess dowager of the great Pembroke, who won from King John the first Great Charter of English liberties.

By this secret alliance, which de Montfort induced the king to sanction, he highly offended the great barons, of whose antipathy ever after he appears to have been justly suspicious. He requited the crowning favor of the king in reinstating him in his earldom, from which he had been deforced during the reign of John, by coercing him to assent to the so-called "Provisions of Oxford" by which the royal prerogatives were transferred to a council at the head of which the earl put himself — thus virtually assuming the place of the sovereign. The invalidity of these Provisions he refused to recognize, after it had been determined by the king of France as arbitrator, to whose decision he had concurred in submitting the question. He added to the dishonor of this act of bad faith by taking up arms against his sovereign and patron upon learning of the adverse award of Louis. At the battle of Lewes he took the king prisoner, and the young Prince Edward also fell into his hands, of which captures he availed himself by forcing his captives to appear to sanction his actions.

That his treasonable conduct was not approved by the nation at large is shown by the fact that the Provisions of Oxford were never included among the statutes and charters of the realm, but were expressly annulled by the "Dictum of Kenilworth," in 1266, which remains on the statute-book to-day.

In order to reap all the advantages possible of the position he had thus usurped, Earl Simon forthwith issued invitations to attend a so-called Parliament, to the minor barons under the name of citizens and burgesses, in the manner I have described.

His whole scheme in this venture seems to have been but an attempt to overcome the ominous hostility of his rival or opposing peers by calling to his support a new body of qualified retainers created from among his feudal dependants by the grant of a new privilege; thus quickening the obligations of fealty by the additional incentive of gratitude.

Even had the proletariat and the artisans, traders, and husbandmen in a few cities or boroughs been included in de Montfort's invitation to aid in electing to his council a brace of barons here and there, — a select class whose privileges were hopelessly beyond the attainment of these inferior common people, — why should this circumstance entitle the ambitious earl to the honor of being regarded as the founder of the present system of popular representation, and of being classed with such patriots and statesmen as Eliot and Hampden, Cromwell, Sidney, and Vane, Sir Samuel Romilly, Sir Francis Burdett, and William Cobbett? But of this I may say more later on, when I examine into the nature of the functions of the early body of "commoners."

In my search for what was really achieved by the convention called together by de Montfort, I have not been able to ascertain that it actually held a legal session; since to constitute a session of Parliament some act of legislation is necessary, and no such act appears to have survived to our time, or to have been mentioned by the ancient chroniclers and reporters. Surely, if any formal legislation can be traced to that body it seems unaccountable that it should have escaped the notice of the antiquaries of England; and the blanks in the statute-books for that period tell against the supposition that any such statute ever existed. The time allowed for the session was short. It was called in December to meet on the twentieth of January; and the rolls of expenses of attendance by the knights and burgesses (or lesser barons), which were made up after the dissolution of the assembly and are still preserved, bear date the tenth of February.

After the battle of Evesham, on the third of August, 1265, in which de Montfort was defeated and slain, the king, it is said by the advice of his son Edward, called a new Parliament, to be held at Winchester on the eighth of September. To this Parliament, convened, as Matthew Paris records, by writs according to the

old form and usage, only the barons and great men were summoned; so that, in the words of Dr. Brady, who in my opinion is the most profound student of this subject as well as the most trustworthy writer upon it, and to whom as an authority even Hallam is obliged to defer, although not pleased with his conclusions: "the commons . . . were not represented as at this day,[1] nor did the king, according to de Montfort's form, issue writs to the sheriffs of counties to cause to come to him two legal and discreet knights," etc.

None of the writs issued for convening the first Parliament[2] of King Edward are known to be extant, although the writ for its prorogation is still preserved; but the preamble to the statute of Westminster the First, passed by this Parliament, shows that it was enacted by the assent of the archbishops, bishops, abbots, priors, earls, barons, and *the whole commonalty of the land* thither summoned; and the writ of prorogation agrees with this, save that for the words "the whole commonalty of the land" it substituted, as an equivalent expression, "the great men of our kingdom." As to the meaning of the word "commonalty," as here used, I have already given some intimation and shall speak more particularly hereafter.

De Montfort's method in calling Parliaments was not continued by King Henry the Third. "This," says Dr. Brady, "appears by that Parliament which was called in the fiftieth[3] year of his reign, for the relief of the disinherited and establishing a firm peace in the nation, in which there were no knights nor burgesses according to future constitutions;" and it is indisputable that no writ or summons of a character similar to those issued by de Montfort was issued for the next thirty years, which brings us to the time of the event which we commemorate this evening.

It may be accepted then, I think, as a settled historical fact, that this exceptional Parliament of 1295 was the first instance in which citizens and burgesses were distinctly *summoned* to attend the king's councils. But in order to compare that

[1] That is, when Brady wrote, nearly two hundred years ago.

[2] Called a general parliament.

[3] Dr. Brady is mistaken here. The Act (the Dictum of Kenilworth previously referred to above) was passed in the fifty-first year of King Henry's reign.

Parliament with the Parliaments of Victoria, it is important to understand precisely what constituted a citizen or burgess within the meaning of these words as used in the writs for this assembly.

With regard to the qualification both of members of Edward's Parliament and of their electors, we have data for ascertaining all the important facts. To begin with, we have the form of the writ on this occasion directed to the sheriff of Northamptonshire for summoning citizens and burgesses, the true significance of which in its reference to the Commons may be better understood if I read a translation of it. It runs thus: —

> The king to the sheriff of Northamptonshire, Greeting:
>
> Because we desire to have a conference and treaty with the earls, barons, and other great men of our kingdom, to provide remedies against the dangers the same kingdom is in at this time, therefore we have commanded them that they be with us at Westminster on the next Sunday after the feast of St. Martin, in winter next coming, to treat, ordain, and do, so as those dangers may be prevented.
>
> We command and firmly enjoin thee, that without delay thou dost cause to be chosen, and to come to us, at the time and place aforesaid, two knights of the county aforesaid; and of every city, two citizens; and of every burgh, two burgesses; of the most discreet and fit for business. So as the said knights may have sufficient power for themselves, and the community of the county aforesaid, and the said citizens and burgesses may have the same power separately from them for themselves, and the communities of cities and burghs then to do in the premises what shall be ordained by common [or the common] council. So that for defect of such power the business aforesaid may not remain undone; and have there the names of the knights, citizens, and burgesses, and this writ.
>
> Witness the king at Canterbury the third of October.

I may as well observe here as later, in the words of the author I have quoted, that "all the treating, ordaining, and doing of this Parliament was only to grant and consent to raise such supplies as the king demanded;" which demand, he might have added, the Parliament was not at liberty to refuse.

The same author further remarks: —

> The not finding any citizens or burgesses summoned by former writs directed to sheriffs, nor particular writs directed to the mayors, bailiffs, or chief officers of cities and burghs before this (except that in the forty-ninth

of Henry the Third), might be a sufficient proof that these were the first summons of citizens or burgesses to Parliament. But to clear this point beyond all doubt and cavil we must look back to the eighteenth of this king and see what the style of Parliaments was, between that time and this.

He continues: —

In this year [that is, the eighteenth of Edward I., five years before the date of the event we commemorate] there is a bundle of writs directed to the sheriffs of several or most of the counties of England, and they are the ancientest extant, or perhaps that ever were . . . by which two or three knights were directed to be chosen for each county; but no citizens or burgesses. And accordingly Norfolk, Suffolk, Cambridge, and Huntingdon shires, and Cumberland, returned, each of them, three knights with manucaptors for their appearance; [and] all other counties but two each, etc.

Now this Parliament of the eighteenth of Edward made to the king a grant of a fifteenth part of all the movable goods of the realm, as appears by an account entered upon the great roll in the twenty-third year of the same king's reign. In the title of this account, the style of that Parliament is given, showing its composition. Translated from the Latin, it runs thus: —

The account of the fifteenth, granted to the king in his eighteenth year, by the archbishops, bishops, abbots, priors, earls, barons, and all others of the kingdom, assessed, collected, and levied by divers collectors in several counties, in the same eighteenth year.

Whereupon Dr. Brady remarks: —

This is the very same style which was used in the reigns of King John and Henry the Third, before the commons or community of counties were represented by knights chosen by them. And 'tis here further to be noted, that the two or three knights chosen for the community of the county did represent them, and, according to the form of the writ, consulted and consented to [the grant of] a fifteenth for them which are here called the *omnes alii de regno*, and were military tenants *in capite* of the ordinary rank, but of the same order with the knights.

The learned antiquary supports his assertions on this head by the plenary evidence of the form of a writ to appoint taxors and collectors of this fifteenth, directed to *militibus liberis hominibus et toti communitati comitatuum*. Here we have a call upon the knights, freemen, and the whole community of the counties, showing, as he argues very conclusively, it seems to

me, that the same persons, only, granted this fifteenth that were wont to grant the same kind of taxes in the times of former kings, and that the so-called "commons," in the counties, were *communities* which, like the guilds or common councils of the cities and burghs, were practically guilds or select fraternities. Dr. Brady proceeds, in the following striking passage, to show the utter worthlessness of the supposed privilege alleged to have been enjoyed by the people in this fictitious representation in Parliament: —

> The cities and burghs, or at least the city of London, this year, also had a fifteenth taxed and levied upon them, which, notwithstanding it was demanded by the king *without their being summoned to Parliament by citizens and burgesses, their representatives*, yet their compliance with the king's demands was called a grant.

In proof of this he gives the copy of a return by the assessors and collectors of the fifteenth, containing a recital that it had been "granted" to the king. He cites other similar instances in the twenty-second year of Edward I., showing the same use of the word "grant," and that persons not included in the description given in the parliamentary writ were forced by the king's commissioner into a compliance with his demands under the pretence of its being voluntary.

The collection was first exacted in London; which exaction was referred to as an example to all other cities, boroughs, and towns. One of these precepts bears date the twenty-first day of November in the twenty-third year of Edward I.; that is, this very 1295. In his treatise Dr. Brady gives sundry minutes of orders for a similar process in every county of the realm; and concludes as follows: —

> By all these records 'tis most clear, there were no citizens, burgesses, or tenants of the king's demesnes summoned to great councils or parliaments until the twenty-third of Edward the First; and also how they were taxed before that time.

It appears, too, that the burgesses and citizens, or commonalty, summoned by the writs issued in 1295, paid a different and larger rate of tax than the clergy, earls, barons, and knights, and that they were summoned exclusively from the

king's demesne cities and burghs, such as had charters from the king and paid a fee-farm rent, as his fiefs.

It is worthy of special notice that these unequal exactions by the king, under the name of grants by the Commons, without even the pretence of parliamentary sanction, were submitted to as a matter of course, in deference to a legal fiction — that comfortable illusion which the Englishman, always and everywhere, complacently accepts as a satisfactory substitute for the unpleasant reality. The hardship of these forced contributions was mitigated, perhaps, by the reflection that, after all, among this band of robbers an equitable apportionment of the expense of defending their booty against the common enemy was properly and necessarily incident to a fair division of the spoils, whether determined by vote, or lot, or by the edict of their chief.

In view of the facts as they appear to me and as I have recounted them upon the authority of the ancient records, — though I fear but too imperfectly, — it almost shakes one's faith in the correctness of the transcripts of records that reach us on this side of the Atlantic to receive, from so great and so recent an authority as Sir Thomas Erskine May, the unqualified declaration that "from the year 1265 may be clearly dated the recognition of the Commons as an estate of the realm in Parliament."

A little careful investigation of the published records suffices to dissipate the charming figment of a Parliament immemorially composed of the sovereign and two houses — one of the lords spiritual and temporal, and the other of deputies from the common people without whose consenting voice no act could have validity and upon whose voluntary grant, in the name and behalf of the traders, husbandmen, mechanics, seamen, and other industrious benefactors of the realm, as well as of the gentry and nobility, the crown was ever dependent for its support and for supplies in its offensive and defensive wars.

It was two years after the alleged representative Parliament of 1295 that the statute *De Tallagio non Concedendo* was enacted, which was the first act ostensibly conferring upon the Commons the privilege of taxing themselves; and it was not until

1308 (the first year of Edward II.) that they were vouchsafed such legislative power as to render their participation or concurrence indispensable to the perfect enactment of a law.

Nearly seventy years later the first speaker was chosen; and the further period of one hundred seventy years elapsed[1] before the House kept a journal, which it did not begin to print until 1752, thirty-seven years after the Massachusetts House of Representatives began to print theirs.

I think I have pursued this branch of my theme far enough to satisfy you that in King Edward's famous Parliament the Commons, so-called, were neither of the plebeian multitude, as they are sometimes imagined to have been, nor representatives of the substantial middle classes or common people, as the word "commons" now implies, but rather that they were of, and chosen by, a select number or brotherhood of commoners, according to the evident derivation of the word from the ancient *communitates*, or guilds. The tie which originally bound these "commons" in a distinct sodality was feudal, but upon the abolition of the Court of Wards and Liveries by the Puritan Parliament — which act undermined the whole stupendous structure of feudalism — a pecuniary qualification took the place of the ancient feudal qualification, and, as thus modified in its constitution, the House of Commons passed from a foundation essentially military to one essentially plutocratic, and so continued, with some revolutionary intermissions, down to the date of the passage of the reform bill of 1832, when, for the first time, population was recognized as the basis of representation, and the right of the common people to the free exercise of the electoral suffrage and to eligibility to a seat in Parliament began to be acknowledged.

We have thus far considered the early history of the lower house of Parliament chiefly in respect to its composition and its external relations, but when we contrast its powers and functions as originally exercised with its later dignity and authority we find the difference still greater, insomuch that it is impossible to predicate its essential identity at both periods of the mere fact of its continuous existence.

[1] To the year 1547.

In all the older Parliaments, after as well as before the idea of representative participation in legislation became established, the Commons, as I have already intimated, enjoyed by right only the privilege of being present, as witnesses of the king's declaration of his will, with (and sometimes without) the consent of the nobles; and for a long time this privilege was limited to a cognizance of the king's acts for supplying his exchequer. Gradually, however, the theory of the necessity of concurrence by the Commons as representatives of the popular will, and especially as guardians of the people's money, received more practical and general application, until, upon the settlement of William and Mary, the nominal right was established beyond dispute. This was the outcome of many memorable debates by the great lawyers of the seventeenth century.

But progress in this direction did not affect the relations between members of Parliament and their constituencies, which, until a comparatively recent date, continued in such a state as to deprive the House of Commons of the character of a representative body in any proper sense. Aside from the grossly unequal apportionment of representation, founded upon conditions long obsolete, abuses prevailed in the management of elections. One of these, and a practice which came to be notoriously common, was the return by the sheriffs of knights of the shire to please the crown, wholly regardless of the will of the electors. A circumstance still more derogatory to the independence and representative efficiency of Parliament was the king's conferring titles of nobility on new men, by the exercise of his prerogative, so as to control the House of Lords or to enable the Lords to outvote the refractory Commons; and, on the other hand, the unlimited incorporation, by virtue of the same prerogative, of new boroughs and cities under conditions favorable to the king's designs.

Thus, at about the period of the American Revolution the whole machinery of legislation in England had become practically subject to the caprice of the sovereign. In short, the king — the chief executive — having, in addition to the influence he exercised over Parliament, authority, as the fountain of

justice, to fill vacancies in the judiciary was virtually an absolute monarch.

From the period of the acknowledgment by Great Britain of the independence of her American colonies, however, there were indications that a great change in the public mind of England had been inaugurated. The result of this change of sentiment was a political revolution, not conducted in the sanguinary and radical manner in which France some years later sought to emancipate herself from the thraldom of hereditary tyranny, but yet preceded and attended by tumultuous public gatherings and sporadic deeds of violence to which in American history there are to be found occasional faint resemblances, but no parallel. As in all previous instances of progress, in English history, the movement towards reform was retarded by a conservative public sentiment. This is attributable not so much to native obstinacy or want of intelligent prevision of the advantages and need of improvement, as to an inbred distrust of professed innovators.

Though exasperating to the comparatively few who chafe at the postponement of the blessings which the prospect of larger liberty promises, this cautious reluctance has proved to be not always without compensating advantages. I believe a careful review will show that, upon the whole, there is much that is laudable in the past workings of this trait of that brave, patient, persistent, long-suffering people, — the progeny of races which have successively invaded Britain and intermarried and inhabited there, — who, notwithstanding their conservatism, through all the vicissitudes of nearly ten centuries, have been gradually mending defects and removing obstacles in one upward path of political progress. Though they have suffered many discouraging relapses and proceeded at first by painfully slow gradations, they have moved rapidly enough, if not too precipitately, in recent years — indeed, so rapidly in certain directions as to suggest the possibility of danger from rash reaction.

But the conservatism of the people was a less serious hindrance to reform than the apathy of a Parliament which did not represent the people. There, the spirit of progress being hopelessly weak, through the machinations of the crown and its

satellites, the further hope of effecting reform by legislative intervention lay, as Englishmen have never been slow to perceive, in the coercive force of public sentiment exerted by outside pressure. Indeed, it is this extraneous force more than anything inherent in the constitution of Parliament that has brought about nearly every great reform since the Conquest either by inducing the Parliament to sanction it, tacitly or expressly, or the crown to yield it at the sacrifice of some part of the royal prerogative. Hence, what is supposed to be public opinion, expressed oftentimes irregularly and inconsiderately by unorganized assemblies comparatively insignificant in numbers, seems to me to deserve the first place in that anomalous, impalpable, shifting, unrecorded collection of rules and traditions, above all prerogative, and nominally above the control of Parliament itself, capable of infinite expansion and adaptation, which, we are told, exists not in imagination merely, but potentially and really, under the name of the British Constitution.

This public sentiment appears to have been most effectual not when it appealed to reason and conscience in the lobby or on the floor of Parliament, — orderly upon the public platform, or calmly through the press, — but, as I have already intimated, when manifested in turbulent and violent demonstrations of brute force. Thus, in the year 1772, the publication of the parliamentary debates which, immemorially, had been deemed a high breach of the privileges of the Commons, began and has since continued to be tolerated without objection only after the Lord Mayor of London[1] had been committed to the Tower for forcibly releasing a reporter imprisoned for this offence by order of the Commons. No express license has since been given to reporters; but, evidently from the conviction that it was discreet to yield in a contention offensive to the citizens of London, and perhaps provocative of open rebellion, the House continues to wink at this infraction of its privileges. Although the published debates are actually ignored in Parliament, the publishers have so long enjoyed immunity from prosecution that the liberty of reporting has apparently assumed the importance of a constitutional right.

[1] Brass Crosby, who thereupon became, for the time being, the popular idol.

Following established precedents from even before the time of Henry III., but conforming more closely to the pattern of the Ormond and Newcastle mobs and the Mug-house riots at the beginning of the reign of George I., the populace at Bristol, after the second defeat of the reform bill of 1831 (which was "an act to amend the representation of the people in England and Wales"), made such violent demonstrations that the next year, in practical disregard of the will of the House of Lords, the bill received the royal assent. The opposing peers were forced to withdraw, led by the "Iron Duke" of Wellington, who, although he had received unmoved the shock of Napoleon's formidable battalions at Waterloo, yielded to the pressure of the "terrible agitation" which had ensued upon the previous rejection of the bill by the House of Lords. By this triumph of the mob — more worthy than the press to be called the great *fourth estate* (perhaps most properly the great *first* estate) of England — fifty-six decayed or rotten boroughs were deprived of the power of representation, which for a long period, including the years of our agony in the Revolution, had been employed to support open and scandalous abuses of the prerogative by a sovereign of thoroughly despotic ideas — that pig-headed incumbent of the throne whose authority our fathers were reluctantly forced to abjure.

These violent demonstrations were imitations of the mobs in St. George's Fields and the Gordon and Birmingham riots of the last century, and the early riots of the present century; such as those at Piccadilly in 1810 and at Westminster in 1815. Practically the same agency continued until, by the enlargement of the franchise by later reform bills, a safety-valve had been provided to the suppressed aspirations of the unrepresented and ineligible multitude.

With less violence numerous great reform meetings were more recently held to do the business which properly belonged to Parliament according to any reasonable conception of the function of legislators. Such were the popular gatherings after the withdrawal of Mr. Gladstone's reform bill of 1866, and the peaceable monster meetings at Birmingham, Hyde Park, and elsewhere, the next year, which were followed by the passage of the

new reform bill of 1867–8, in spite of Lord Derby's warning that it was "a great experiment" and "a leap in the dark." It is worthy of notice that in proportion to the extension of the elective franchise and the enlargement of the sphere of representative eligibility, the violence of these demonstrations has diminished, insomuch that the great reforms of 1884 and 1885 were adopted with a degree of quiet and good order approaching the standard of an election in New England.

But I have not finished all that may be profitably considered at this time with regard to the growth of the power of the House of Commons. It is to-day conceded by the statesmen and political philosophers of Great Britain that "the controlling power of the State, in the executive as well as in the legislative department of the government, has gradually passed, almost without observation, from the sovereign to the representatives of the people in the Commons House of Parliament." In other words, the Commons are the government. Indeed, one of the leading statesmen of England, who certainly ought to know how to measure the full force of his words, is reported as declaring: "The crown is the House of Commons."

What an impression this language and a knowledge of the condition of affairs which justifies it leave upon the minds of us, the descendants of Puritan stock in New England, who have been accustomed to question whether the Long Parliament did not go too far when in 1649 it voted the House of Lords a useless adjunct to the Legislature! Yet this vote, for which the Puritans have been promiscuously execrated for centuries as traitors and fanatics, by lawyers, clergymen, politicians, and historians, is in perfect accord with a measure more than once in time past, and again very recently, seriously and openly proposed. This purpose, which was once deprecated as threatening the subversion of the British Constitution in an essential part, is now, according to the new exposition of the fundamental law, not to be deemed revolutionary, since the end it contemplates is clearly within the omnipotent authority of the Commons.

A review of the progress of the authority of Parliament, from the days of Edward the First to its present status, affords a strik-

ing illustration of the difference between the Anglo-Norman and the Latin races in their legislative development. The former, drawing their law from a source essentially despotic though disguised under an uncertain nomenclature indicative of limited monarchy, have grown, in the course of six centuries, into a representative democracy, possibly equally despotic. I say *possibly*, because the House of Commons in the exercise of its confessedly legitimate authority can, at any time, easily and constitutionally dispense with the effete impediment of the upper house and the mere ornament of a crown; and it alone would continue to be, as Parliament is now, the final judge of the legality of its own measures. On the other hand, the progress of the Roman Law, as sententiously described by Sir Henry Maine, "clothed at first in the pretence of popular sanction, but afterwards emanating undisguisedly from the imperial prerogative, extends in increasing massiveness from the consolidation of Augustus's power to the publication of the Code of Justinian."

Now from this branch of my discourse (the fault of which, if it be only that it has been wearisomely protracted, I must ascribe to the over-confidence of your committee, who, not understanding my weakness, assured me that there was more danger of my not filling up the time than of my saying too much), let us consider the second part of the task your committee have assigned to me; that is, so much of my discourse as must be devoted to a comparison of the rise and progress of our own Legislature with the development of the Parliament of England. Let us consider, then, the growth of our own Legislature from its beginning under Governor Winthrop to its final establishment under the Constitution of the Commonwealth. On this I shall endeavor to be brief and to the point.

Assuming that you all know that the colony charter contemplated the erection of a corporation within the realm, with a subsidiary government over the colony here planted, I will add that it provided for the holding, annually, by the officers and other freemen, — that is, by the original corporators and their associates and successors, — four Great and General Courts, beginning on the last day of each of the four ancient terms of

the law-courts of England; viz., Hilary,[1] Easter,[2] Trinity,[3] and Michaelmas.[4] It is also certain that in one year[5] after the granting of the charter, not only all these courts were held, but that ten other General Courts were successively convened in London.

Thus far the principal corporation appears in all respects analogous to a private corporation of our day. At the same time the management of the local affairs of the colony, chiefly composed of planters resident at Naumkeag and vicinity, later named Salem, was deputed to Governor Endicott and a council of thirteen men, whose authority extended over all other residents of the territory granted in the charter. Endicott had ruled here about two years when the first governor of the company, Matthew Cradock, resigned his office to Winthrop, who was elected his successor according to a previous understanding. Winthrop removed to New England, bringing with him a large company of immigrants and the original engrossment of the charter of which Endicott had only a copy or exemplification.

Soon after Winthrop's arrival a General Court was held at Charlestown,[6] thus, *ipso facto*, superseding the *régime* of Endicott.

The letter of the charter was gradually disregarded in several particulars by the colonists, who, however, seem to have been strict in their observance of the requirement that the freemen should participate in the election of governor, deputy-governor, and other general officers, and to have regarded with considerable though not with strict fidelity the requirement that the freemen should have a voice equally with the assistants in all legislation.

The assistants were officers analogous to the directors of a modern private corporation, but enjoying privileges and exercising some peculiar powers given to them by the charter, expressly or by implication, to enable them to carry out its provisions. Having the right to define the qualifications of freemen, they soon passed a law making church membership a condition indispensable to the enjoyment of that privilege.

[1] January 11–31.
[2] April 15 – May 8.
[3] May 22 – June 12.
[4] November 2–25.
[5] 1629–30.
[6] On the nineteenth of October, 1630.

When, gradually, the observance of the custom of assembling the freemen quarterly, ceased, they attended, with some intermissions, two General Courts, annually: one in May and the other usually in the autumn or early spring; the former of which (the "Court of Elections") being never omitted, and the latter being occasionally omitted altogether, or held exclusively by the assistants, in contravention of the charter.

Now, at first, the General Courts were attended by the freemen in person; which practice while the corporation remained in England had not been found inconvenient, since the freemen, who were not numerous, were resident in the realm, and the meetings were held in London; but after their arrival in New England the freemen of the colony, to whose numbers there were gradually large accessions, flocked to the General Court at Boston from all the scattered plantations, precisely as to-day the stockholders of a railroad company attend its annual meetings. In May, 1634, it having become apparent that these general mass-meetings could not conveniently be continued forever, in view of the present and prospective increase in number of the freemen, it was ordained that the freemen of the several towns, if they chose, might send deputies to represent them, by proxy, in all matters except for the election of governor, etc., which was to be determined by written ballots given at home by the freemen and carried to the General Court and there cast by the deputies. This permission to send deputies, however, did not wholly exclude the freemen, who might attend in person if they so chose; and hence the first list of deputies, on the fourth of March, 1634–5, includes, with the deputies, freemen who had not been chosen representatives, but who attended in their own right.

On the second of September, 1635, appears in the record the first list of deputies expressly so designated in the heading. That year there were three Great and General Courts, to each of which the deputies were newly chosen, showing the practice which continued until the General Court changed it by ordaining that the deputies be chosen annually.

At the last of these three courts (March, 1635–6), the number of sessions of the Great and General Court was reduced

to two, to be held in May and October respectively, notwithstanding which, during the next year, while Sir Henry Vane was governor, four courts were held; viz., in May, September, December, and April, to each of which deputies were newly chosen. At the second of these courts the number of deputies to be sent by the several towns was adjusted upon the basis of the number of freemen in each, showing thus early the recognition of a numerical popular basis of representation. In 1637 four General Courts were convened besides one held by adjournment; and in 1638 three were convened. In each of the years 1639, 1640, 1641, and 1642, two courts were held, apparently in conformity to the reduction voted in March, 1635–6.

In 1643 came another and important change. This was the adoption, by a vote in the second session, held in September by adjournment, that thenceforth deputies be chosen for a whole year. This appears to have gone into operation at the beginning of the next political year.

From this time forth, so far as I have been able to discover, deputies were chosen for the whole year to serve in the two regular sessions (May and October); but when other sessions were specially convened during the year new writs were issued and new elections held, although frequently many of the same deputies were rechosen. Thus a special session was held in March 1643–4, at which forty deputies were chosen, against thirty-eight chosen for the previous May session; and of these two bodies there were only fifteen that served in both.

The next great step was the separation, in 1644, of the freemen and deputies in the General Court from the assistants, in imitation of the two houses of the English Parliament. This was brought about by such a trivial circumstance that it would be too ridiculous for narration if it were not for the important result. I will let Governor Winthrop report the case in his own words: —

> At the same general court there fell out a great business upon a very small occasion. *Anno* 1636, there was a stray sow in Boston, which was

brought to Captain Keayne:[1] he had it cried divers times, and divers came to see it, but none made claim to it for near a year. He kept it in his yard with a sow of his own. Afterward one Sherman's wife, having lost such a sow, laid claim to it, but came not to see it, till Captain Keayne had killed his own sow. After being shown the stray sow, and finding it to have other marks than she had claimed her sow by, she gave out that he had killed her sow. The noise hereof being spread about the town, the matter was brought before the elders of the church as a case of offence; many witnesses were examined, and Captain Keayne was cleared.

Keayne having repeatedly recovered damages, with costs, in the cases brought against him by Mrs. Sherman, and — which was his chief misfortune — having obtained a verdict for twenty pounds in a suit he brought against her for slander, the whole country was stirred up in her behalf, notwithstanding Keayne had generously remitted to her the amount of his judgment, less his costs for witnesses.

The courts and churches having been duly applied to without effecting a settlement, the matter came to the general assembly on a petition by Mrs. Sherman for a new trial before that tribunal sitting as a court of judicature. Seven days were spent in hearing testimony and in argument, when it was found that judgment could not be reversed, on account of a deadlock in the votes of the deputies and magistrates. For a valid judgment, the law was understood to require a majority vote of both branches, and there being nine magistrates and thirty deputies, of whom two magistrates and fifteen deputies voted for the plaintiff, and seven magistrates and eight deputies for the defendant, the other seven deputies not voting, no judgment could be rendered.

This trial seems to have been had in June, 1642. The discussion of the issue continued for more than a year and a half, during which divers arguments, on both sides, of law, scripture, philosophy, and casuistry, were prepared, some of which were

[1] Capt. Robert Keayne, the first charter member of the Ancient and Honorable Artillery Company, had his house and garden on the southern corner of Washington and State streets. He was noted for his enterprise and public spirit, and though there were certain hints that he was rather hard at a bargain he appeared to have been generous in his lifetime, and to have left evidence of his charitable inclinations in his last will. The adverse rumor seems to have been availed of to work up public sentiment against him in his controversy with Goodwife Sherman, who was represented to be poor.

published in manuscript, and one is yet preserved by the Massachusetts Historical Society. At length, in March, 1643–4, a result was reached by the concurrence of both branches in an order which, in the compact language of the Governor, "determined the great contention about the negative voice." The following is the order as it appears in the colony records: —

Forasmuch as, after long experience, wee find divers inconveniences in the mann^r of o^r pceeding in Co^rts by ma^trats & deputies siting together, & accounting it wisdome to follow the laudable practice of other states who have layd ground-works for government & order in the issuing of greatest & highest consiquences, —

It is therefore ordered, first, that the magistrates may sit & act busines by themselues, by drawing up bills & orders w^ch they shall see good in their wisdome, w^ch haveing agreed upon, they may psent them to the deputies to bee considered of, how good & wholesome such orders are for the country, & accordingly to give their assent or dissent, the deputies in like mann^r siting a p^rt by themselues, & consulting about such orders & lawes as they in their discretion & expience shall find meete for comon good, w^ch agreed upon by them, they may psent to the magistrats, who, according to their wisdome, haveing seriously considered of them, may consent unto them or disalow them; & when any orders have passed the approbation of both ma^trats & deputies, then such orders to bee ingrossed, & in the last day of the Court to bee read deliberately, & full assent to bee given; pvided, also, that all matt^rs of iudicature w^ch this Co^rt shall take cognisance of shalbee issued in like manner.

Considering the importance of the change thus wrought in our legislative system, it would seem that what the lupine foster-mother of Romulus and Remus was to the Eternal City the porcine female should be to the House of Representatives of Massachusetts, and that, as an emblem in the chamber of the deputies, she is entitled to precedence over the historic cod-fish, or, perhaps, to divide the honors.

From the time of this separation, the House of Deputies conformed more and more to the pattern of the House of Commons. They elected a speaker and chose a clerk, and began to keep a journal distinct from the records of the Secretary. Unfortunately, all their journals for the colonial period, save those from 1644 to the end of the first session of 1657, are lost — probably in the conflagration of 1711 or 1747, both of which wrought such havoc among the records in the town-house or old court-house on

State Street. The single printed volume of these journals is erroneously included with the printed records of the Governor and company, and introduced by some incomprehensible but certainly mistaken explanation of its want of harmony with the other records, which are the legislative records of the upper branch, and were kept by the Secretary of the colony. During the first General Court under the new system the journal was kept with diurnal entries under appropriate headings. This practice was discontinued the next year. At first, against all votes and ordinances passed in concurrence, the minute was made on the journal "by both;" and later, "*per curiam.*" This practice seems to have been wholly discontinued after the May session, 1651.

In the October session, 1648, the manner of keeping records by the Secretary and the clerk of the House was further regulated. All bills, laws, petitions, etc., passed in concurrence, and voted upon last by the magistrates, were to be left with the Governor until the end of the session; and, in like manner, all such papers last acted upon by the House were to remain with the speaker. At the close of the session the assembled court, or a committee of both branches in presence of the clerk and Secretary, were to deliver them to the Secretary to be recorded. This recording was to be finished in one month, after which the clerk was to be allowed another month in which to transcribe this record into his book of copies. The Secretary's set was to be the official record. Both sets of these books of record, which by the same order were to include or to be accompanied with other books containing all previous legislation not already ordered to be printed, were probably consumed with the House Journals. The records of the magistrates or assistants, and many if not most of the files, however, seem to have escaped the conflagration. These files were in two groups — one consisting, in part at least, of "such bills, orders, etc., that hath only passed the magistrates," and which were to be given into the custody of the Secretary to be kept on file, and another of similar papers "such as have only passed the deputies," and which were to be delivered to the clerk of the House, to be filed and kept by him in like manner.

The vote requiring that the orders, etc., enacted remain in the hands of the Secretary and clerk of the House, respectively, until the end of the session was repealed in the first session of 1650, and the clerk was ordered to send to the Secretary, from time to time, immediately after their passage, such bills, etc., as had been concurrently enacted, and voted upon last by the House. This, substantially, became the settled practice of the Legislature down to the adoption of the Constitution.

This is all the space that can be allotted on this occasion to the history of the Massachusetts Legislature until the arrival of the province charter, save to say that during the presidency of Dudley and the rule of Andros we had no representative body and no elective assembly. A governor and council were appointed by the crown, not over Massachusetts alone, but eventually over "that part of the king's territory and dominion in America designated as the colony of the Massachusetts Bay, the colony of New Plymouth, the provinces of New Hampshire and Maine, and the Narragansett country or King's Province, together with the neighboring colonies of Rhode Island and Connecticut, the province of New York, and East and West Jersey, and the territories thereunto belonging."

Upon the arrival of tidings of the English revolution of 1688–9 and the landing of King William at Torbay, the people of Boston and of the surrounding country rose in their might, and after incarcerating, for mutual safety, Andros, Dudley, and some other personages holding office by royal appointment, they called a convention, which was followed by a provisional government as near the pattern of that of the late colony as practicable; and they reinstated in the gubernatorial chair the venerable Simon Bradstreet, the last governor under the old charter.

Many interesting incidents relating to this new and peculiar assembly, which was sanctioned by King William, might be narrated if time permitted. The most important of these, and most lasting in its effects, was the fitting out of the unfortunate expedition, under Sir William Phips, against Quebec, and the issue of paper money for defraying the expenses of this unsuccessful attempt,— this issue constituting the first bills of public credit circulated in the colony.

At length, in May, 1692, arrived the "Nonesuch" frigate, bringing the new governor and the charter of the newly erected province. By this instrument the Great and General Court was reëstablished with a governor, a lieutenant-governor, and a secretary, all appointed by the crown, and a council, — elective after the first board, the members of which were named in the charter, — and a house of representatives chosen upon a simple property basis of eligibility, instead of upon the qualification of church-membership which had prevailed under the colony charter; and the old twenty-four years' rule of qualification for non-freemen was succeeded by that of the common-law full age of twenty-one years.

In form the new Legislature was much like its predecessor, but its power of legislation was hampered by the governor's authority to veto, in the first instance, and after that by the supervisory power of the king, who reserved the right to disallow any and all acts within three years after their presentation to the Privy Council.

In the same vessel with the charter came Increase Mather, the agent through whose instrumentality, chiefly, the charter had been obtained. It was Saturday night when the voyagers disembarked — the beginning of the Puritan sabbath; yet, that equal homage might be paid to the agent and the governor, the eight companies of militia which escorted the latter home did the same honor to the Puritan minister. Though the devout inhabitants of Boston were not startled by volleys of musketry nor the roar of cannon, the measured tramp of the soldiery to the sound of martial music, on that still evening in May, drew them from their Bibles and catechisms to behold the passing pageant — a scene such as New England had never before witnessed.

The arrival of the charter happened in the first heat of the witchcraft delusion, with the subsidence of which, in the course of a year, vanished much of the superstition of colonial times. Thenceforth, too, a new era opens in Massachusetts legislation. More explicitly than in the colony charter, the new charter contained a grant of complete autonomy. Rights and privileges which had been derived only inferentially from the earlier charter,

and which it was found difficult to maintain by the application of the prevailing rules of legal construction, were in the new charter expressly conferred. In all the relations between the people of Massachusetts and the sovereign the local Legislature now assumed the place of Parliament. It was through this organization, as the substitute of the Lords and Commons, that the people of Massachusetts were entitled of right, within certain limits, to express their will, and absolutely to exercise full discretion in proffering or withholding grants of money to the crown. This was the solemn compact between them and the sovereign which could not be impugned or abrogated without their free consent, except by such an exercise of power as, by the Constitution of England, was clearly obnoxious to the charge of tyranny and usurpation. The privileges conferred or recognized in this charter in their full extent became later the subject of bitter contention between the patriots and the loyalists, but the right to them was amply vindicated by the success of the American Revolution.

The first General Court met in June, and in imitation of the practice in England —

"Several of the principal members of the House of Representatives waited upon his Excellency [the Governor] acquainting him that they had made Choice of Mr. Wm. Bond to be the Speaker of their House, whome they now came to present before his Excellency; and the said Speaker, in behalf of the House, prayed his Excellency that there might be allowed unto them the accustomed priviledges of an English assembly, which they Expected as their due; namely, that they have the Liberty of a free, and open debate of all matters lying before them, and what they shall properly be concerned in; That they be admitted to have free access unto his Excellency, from time to time, as there shall be occasion; That no member of the House, nor his Servant attending upon him, during the time of the sessions, and whilst they shall be going to or returning from the assembly, be any ways molested, Troubled or arrested, sued or imprisoned, except in Cases of Felony or High Treason: All which his Excellency readily consented to be granted them."

These concessions were made by the governor as the representative of the king.

The next year the Council and House passed a joint vote of the same purport.

For the first time in the history of the Massachusetts Assembly, legislative bills were now passed through the regular stages to engrossment and enactment, and the engrossed bills, when enacted, were required to be signed by the governor and sealed with the seal of the province. Each branch kept a journal, in its legislative capacity, and the governor and Council kept another, of their executive and judicial doings. The latter, as well as all the journals of the House, to the year 1715, when these journals were first printed, were destroyed in one of the great fires which consumed the town-house, as I have already stated in another connection. One of the greatest mistakes ever made in our legislative history was committed early in this period in passing an act requiring deputies to be freeholders and residents in the towns they represent. This, which was passed to gratify the spite of Governor Phips, has been deplored by the wise in every generation; but no legislator has yet appeared sufficiently intelligent to perceive the benefit that would follow a return to the primitive rule, and at the same time sufficiently influential to carry through a measure to break the fetters with which that absurd act restricts our choice.

The charter provided that to this Great and General Court each town from time to time should elect two deputies and no more; but the Assembly, availing themselves of another and seemingly contradictory clause in the same instrument, changed this arrangement and passed an act giving Boston two extra deputies. This act, being allowed by the Privy Council, had the force of law. Other changes in the basis of representation were subsequently made under the same doubtful clause of the charter, effectually sanctioning the interpretation which the provincial Legislature had adopted. Several important matters, especially the election of councillors, which I have already referred to, being determined by a joint vote of both branches, the popular party were ever ready to vote for the incorporation and admission of new towns, in view of the resulting increase of the relative strength of the lower house. The conservatives were opposed to the growth of the popular branch, and, as a compromise, one of the governors devised the unconstitutional

expedient of incorporating "districts," with all the powers of towns except that of choosing representatives.

A striking illustration of the strong tendency in Massachusetts to democracy in the latter half of the eighteenth century, a decade before the Revolution, was the building of a gallery, in the representatives' chamber in the old town-house, in June, 1766, for the convenience of the public. This was five years before the pressure of the public sentiment of London had secured for reporters permission to take down for the newspapers the debates of the House of Commons. The contrast between the quiet and determined action of the Massachusetts representatives, under the lead of Samuel Adams, in waiving their immemorial privilege of secret debate, and the boisterous demonstrations in London — the commitment to the Tower of the intrepid Lord Mayor, and the eventual reluctant connivance of the Commons at this breach of a privilege they were unwilling to relinquish, but dared not defend — is a fair illustration of the different manner in which political progress has gone on here and in the mother country.

With the emancipation of the people, at the beginning of the Revolution, from the control of the Privy Council and of the local representatives of the crown the development of liberal principles in government here received a new impulse. One of the first acts of the Legislature after the renunciation of the authority of the last royal governor was to put an end to the anomalous district system by passing a general act turning all districts into towns with the accompanying right of representation.

But I find I must press on more rapidly through the multiplying incidents of later legislative years. It is out of the question at this time to attempt a retrospect of the curious and important controversies between the royal governors and the ministers of the crown on the one hand and the Assembly on the other.

The progress of the Revolution demonstrated the ability of the Legislature to grapple with the new and startling exigencies, and to solve the unprecedented problems of that era. The choice of the first delegates to the Continental Congress, in June, 1774,

at Salem, when the authority of Governor Gage was disregarded, and the meeting of the General Court in the same town, four months later, when the Provincial Assembly came to an end and the Provincial Congress succeeded, — all so richly suggestive, — must be passed over to bring us to the following year, when the General Court resumed its old functions no longer as the Legislature of a dependent province, but of a free colony with a new title and a new seal which all legislative acts, judicial processes, and other public papers were required to bear in place of the former badges of royalty.

In May, before that memorable month of July in which the Congress at Philadelphia declared our independence, the Legislature of Massachusetts severed the last strand of the cord that held it to its old allegiance, and adopted the title and insignia of an independent State, impressing them upon all her acts and writs. Being now free to act its perfect will, the Assembly adopted the first system ever devised of representation based upon the apportionment of deputies according to population. This was in accordance with resolutions adopted at a convention held at Ipswich, April 29, 1776. Thus was finally effected a change which had been temporarily tried by the General Court of the colony nearly a century and a half before, and unsuccessfully attempted by the province in 1693. It was the first adoption of a system so philosophical in its design and so satisfactory in its operation that, practically, it has been approved and followed by the mother country after many long and bitter contests, and is now closely imitated in all her colonies.

I will detain you on this head only to read a single paragraph from the admirable resolutions adopted at Ipswich: —

> If Representation is equal, it is perfect; as far as it deviates from this Equality, so far it is imperfect, and approaches to that State of Slavery; and the want of a just Weight of Representation is an Evil nearly akin to being totally destitute of it. — An Inequality of Representation has been justly esteemed the Cause which has in a great degree sapped the foundation of the once admired but now tottering Fabric of the British Empire; and we fear that if a different mode of Representation from the present, is not adopted in this Colony, our Constitution will not continue to that late Period of Time which the glowing heart of every true American now anticipates.

The work of establishing this system, which antedated the first reform bill in England by nearly sixty years, was completed upon the adoption of Article XXI. of the amendments of the Constitution of the Commonwealth.

I cannot close without offering something to conciliate those whom, possibly, in my exordium, I may have disappointed by questioning the historical value of the date which, this evening, we are endeavoring to make more conspicuous as an epoch. But, really, is the circumstance of time important? What if 1295 be not astronomically, philosophically, or in any other way, the exact date of the historic change which we imagine to have taken place, and to which we would fain look back with grateful pride? Is the date or even the fact of so much consequence as the knowledge that during the reign of the monarch who that year sat on the throne of England the statute *De Tallagio non Concedendo* was enacted; that the benign influence of Edward's reign extended into the next; and that by the separation of Parliament into two houses a noble emulation was fostered to excel in a common service for the good of all; thus paving the way for those real and great reforms which were accomplished more than five centuries later?

That truly English sovereign, — born in Westminster, a lover of his native country, and in desert so far above Simon, Earl of Leicester, that, while the latter remains a romantic myth in the dim past to tempt credulous lovers of the picturesque in history to use him as a glittering foil to the dreary, vacant background of the unknown, King Edward has received for his obvious merits voluntary tributes of admiration from the most careful and profound students of history, the most learned and candid lawyers, and the wisest statesmen. Of these encomiums I need quote only the familiar passage in Blackstone's Summary of the rise and progress of the Constitution of England: —

> The third era [says he] commences with the reign of Edward the First, who hath justly been styled our English Justinian. For in his time the law did receive so sudden a perfection, that Sir Matthew Hale does not scruple to affirm that more was done in the first thirteen years of his reign to settle and establish the distributive justice of the kingdom, than in all the ages since that time put together.

The halls of Westminster, built by William Rufus on such solid foundations more than a century before, began, in Edward's day, to echo the eloquent language of lofty morality at the bar, and of that great learning and of those philosophical expositions of the rules of the common law and of equal justice which, lingering among its hallowed arches for centuries, were blown thence abroad to every continent and over every sea for the benefit of all mankind.

This judicial wisdom was a fruit of long-continued growth — the accumulation of centuries of profound study and of acute debate by hundreds of the brightest minds of the nation. Nevertheless I am by no means satisfied, by any evidence I have seen, that an experience of the supposed benefits attending the reign of the English Justinian would please the most easy-going optimist of to-day.

It is not the historical *fact*, then, that we are to regard, but the more important political *idea* which that period engendered. Unreal and intrinsically unimportant as was the boasted incipient event, or indeed any supposed political advantage acquired by the people in Edward's time or even for centuries later, the *idea* that then took root was the seed of an aftergrowth which, on both shores of the Atlantic, and wherever the native Englishman or the English American founds a state or administers government, has been productive of results most beneficent to mankind.

We have seen how utterly at variance was the practice and theory of representation in England for nearly six centuries; and yet, for the last third of that period, in the mind of the Englishman, the idea that the money of the subject cannot be got from him except by his free and voluntary grant was so firmly established that he stood ready to fight for it, notwithstanding his actual every-day experience and observation belied the doctrine.

The shibboleth "No taxation without representation" was only a corollary of the same doctrine, and yet, as we have seen, practically the representation which was deemed a sufficient compliance with the doctrine was "nominal" and the merest figment.

Even in the debates of the American Revolution, patriots of the style of James Otis were profuse in their professions of belief in the absolute supremacy of Parliament, and were willing to accept the offer of representation therein, howsoever inadequate and disproportionate, in exchange for privileges to which they were clearly entitled by the province charter.

The belief that the birthright of Englishmen to grant or withhold moneys for public uses at their absolute discretion, irrespective of the will of the crown, was recognized as far back as the reigns of the third Henry and the first Edward, inspired Hampden's opposition to the ship-money, brought Charles's head to the block, and produced an English Commonwealth which existed long enough to abolish the feudal system by an act of the same Parliament that furnished England with models for all her best legislation through the succeeding two centuries. The same idea was the polar star of Samuel Adams, the unsleeping Palinurus of the American Revolution, and won for him and his coadjutors the sympathy of, and encouragement from, the philosopher Priestly, Jonathan Shipley the good bishop of St. Asaph, the great Lord Camden, and the patriotic citizens of London, as leaders, and a strong band of followers in Parliament and throughout the mother kingdom.

Nor was this idea prevalent in New England for the first time during the Revolution. It was the settled policy of the ancient colony; and nearly two centuries ago it was openly avowed by the provincial House of Representatives in their message to Governor Dudley in answer to his speech urging them to comply with the queen's demands that they settle permanent salaries on her appointees, and vote the money required for rebuilding the fort at Pemaquid.

Let not, then, the failure to trace in their perfection back to the rude age of the Plantagenets the political privileges which now we enjoy unquestioned induce us to underestimate the value of whatever passes for history. I presume that the date of no other epoch of equal antiquity and of equal importance is more accurately fixed. Ancient traditions are not to be esteemed according to the accuracy of their chronology. Let us remember that the festival of the advent of the Messiah,